

The Honorable MARSHA J. PECHMAN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

A.B., by and through her next friend
CASSIE CORDELL TRUEBLOOD, et al.,

Plaintiffs,

v.

WASHINGTON STATE DEPARTMENT
OF SOCIAL AND HEALTH SERVICES,
et al.,

Defendants.

NO. 2:14-cv-1178 MJP

SUPPLEMENTAL JOINT STATUS
REPORT RE: FORTHCOMING
EVIDENTIARY HEARING

With this hearing rescheduled, the Parties offer updates to their shared vision for the forthcoming evidentiary hearing on Plaintiffs' motion alleging breach of a settlement agreement in this matter.¹ The Parties welcome feedback from the Court to the extent the Court has a different vision for the forthcoming hearing. The Parties also jointly request that the Court set a deadline for submission of the amicus declaration.

I. DATES

The Parties are prepared to present additional information at the request of the Court through the presentation of evidence and witnesses in-person at the United States District Court

¹ This Status Report is intended to supersede the one filed on March 20, 2023 and at Dkt. No. 974.

1 for the Western District of Washington, in Seattle, beginning on June 12 and continuing to June
2 15, 2023.²

3 **II. ROLE OF THE AMICUS**

4 The Parties understand that the amicus counties (Amici) will be allowed ten minutes for
5 an opening statement on the morning of June 12, 2023, and 30 minutes to argue their brief at the
6 conclusion of evidence and prior to arguments of the Parties. The Parties understand that the
7 Amici may propose solutions to the problems raised in the Motion for Material Breach by filing
8 a declaration, but request that the Court also order that the declaration be filed prior to the first
9 day of hearing, or before June 12. Filing of this declaration by the beginning of the hearing will
10 facilitate meaningful consideration of the additional facts provided by Amici through this
11 declaration, which will benefit the Court and the Parties.

12 **III. OPENING AND CLOSING STATEMENTS**

13 The Parties propose a brief opening statement after any opening statement provided by
14 the Amici.

15 The Parties believe they should be permitted argument on their motions, or a closing
16 statement, after the close of evidence and after any argument provided by Amici on the final day
17 of the evidentiary hearing.

18 **IV. WITNESSES**

19 The Parties estimate 3-4 hours for each witness. The Parties have convened to discuss
20 the witnesses to be called and the order in which they should be called, including to account for
21 periods of unavailability.³ The Parties reserve the right to recall witnesses and agree to waive
22 objection as to scope of cross-examination. The Parties agree that the State should take witnesses
23 first, and then the Plaintiffs should be permitted an expansive cross examination of each witness,

24 ² Should this hearing need to continue past June 15, for any reason, Counsel for the State ask the Court to
25 consider certain periods of unavailability already provided to the Court's staff by email sent at 1:27 PM on May 16,
26 2023.

³ This is the same unavailability already provided to the Court's staff by email sent at 1:27 PM on May 16,
2023.

1 followed by re-direct and re-cross, if necessary. The Parties also agree that witnesses need not
 2 be excluded from the courtroom during testimony from other witnesses during this evidentiary
 3 hearing.

4 The witnesses the Parties believe to be necessary, in the order proposed by the Parties,
 5 are:

6 **1. Dr. Danna Mauch, Court-Appointed Monitor**

7 Dr. Mauch is to be called regarding her observations of the State's efforts towards
 8 compliance, joint efforts by herself and the parties to engage county judges and prosecutors
 9 regarding diversion options, and the like.

10 **2. Dr. Keri Waterland, Division Director, Division of Behavioral Health and**
 11 **Recovery at the Health Care Authority (HCA)**

12 Dr. Waterland is the primary witness to be called related to the HCA's efforts to help the
 13 State with compliance under Trueblood, and the State's efforts to transform the State's
 14 behavioral health system including the creation of additional treatment options in the
 15 community.

16 **3. Dr. Thomas Kinlen, Director of the Office of Forensic Mental Health**
 17 **Services**

18 Dr. Kinlen is the primary witness to be examined regarding the Department's
 19 competency restoration treatment admission algorithm, competency evaluation process and
 20 outcomes, evaluator staffing, and efforts to communicate to criminal courts when an individual
 21 has previously been found not competent to stand trial. Dr. Kinlen can also speak to contempt
 22 orders from state courts, but the statistical information requested by the Court will be generated
 23 by the Attorney General's Office and the Parties expect to stipulate to that information.

24 \\\

25 \\\

26 \\\

1 **4. Dr. George Petzinger, Medical Director of the Gage Center for Forensic**
 2 **Excellence at Western State Hospital**

3 Dr. Petzinger is the primary witness to be examined regarding admission and treatment
 4 at Western State Hospital, the criteria and process for “triage” decisions regarding admissions to
 5 the hospital, and the flow of patients through the Gage Center for Forensic Services to the
 6 Civil Center.

7 **5. Kevin Bovenkamp, DSHS Assistant Secretary for the Behavioral Health**
 8 **Administration**

9 Mr. Bovenkamp is the primary witness to be examined regarding the Department’s larger
 10 vision for treatment bed space, progress toward construction and renovation of new bed space,
 11 staffing, workforce development, and the like. Mr. Bovenkamp also participates in admission
 12 and bed allocation decisions, but from a high-level perspective.

13 **V. EVIDENTIARY FOLDERS**

14 The Parties are preparing their evidence for the Court, in accords with their best
 15 understanding of this Court’s chambers procedures. The Parties expect to be able to stipulate to
 16 the authenticity of the vast majority of documents contained therein. To the extent any disputes
 17 exist as to authenticity, disputed documents will be clearly marked as such.

18 **VI. STIPULATED FACTS**

19 The Parties are working to update the stipulated evidence previously filed with the Court.
 20 The updates are mainly to ensure that the various metrics included in those exhibits, originally
 21 prepared in March, are refreshed to include the most up to date information. The Parties believe
 22 that by stipulating to undisputed facts, the necessary scope of witness testimony can be reduced
 23 during the course of the hearing.

24 \\

25 \\

26 \\

VII. QUARTERLY STATUS REPORT

The Parties filed their joint Quarterly Implementation Status Report on May 15, as was ordered by this Court. Dkt. No. 990.

RESPECTFULLY SUBMITTED this 30th day of May 2023.

ROBERT W. FERGUSON
Attorney General

s/ Marko L. Pavela

Nicholas A. Williamson, WSBA No. 44470
Marko L. Pavela, WSBA No. 49160
Anthony W. Vaupel, WSBA No. 47848
Assistant Attorneys General
Office of the Attorney General
7141 Cleanwater Drive SW
P.O. Box 40124
Olympia, WA 98504-0124
(360) 586-6565
Nicholas.Williamson@atg.wa.gov
Marko.Pavela@atg.wa.gov
Anthony.Vaupel@atg.wa.gov

Attorneys for Defendants

s/ Kimberly Mosolf

David R. Carlson, WSBA No. 35767
Kimberly Mosolf, WSBA No. 49548
Elizabeth Leonard, WSBA No. 46797
Disability Rights Washington
315 Fifth Avenue South, Suite 850
Seattle, WA 98104
(206) 324-1521
davidc@dr-wa.org
kimberlym@dr-wa.org
bethl@dr-wa.org

Christopher Carney, WSBA No. 30325
Sean Gillespie, WSBA No. 35365
Carney Gillespie PLLP
600 First Avenue, Suite 108
Seattle, Washington 98104
(206) 445-0212
christopher.carney@cgilaw.com
sean.gillespie@carneygillespie.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, *Christine Townsend*, state and declare as follows:

I am a citizen of the United States of America and over the age of 18 years and I am competent to testify to the matters set forth herein. I hereby certify that on this 30th day of May 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

David Carlson: davide@dr-wa.org

Kimberly Mosolf: kimberlym@dr-wa.org

Elizabeth Leonard: bethl@dr-wa.org

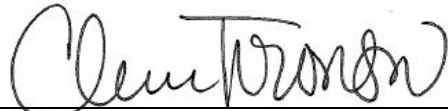
Christopher Carney: Christopher.Carney@CGILaw.com

Sean Gillespie: Sean.Gillespie@CGILaw.com

David JW Hackett: david.hackett@kingcounty.gov

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 30th day of May 2023, at Olympia, Washington.



CHRISTINE TOWNSEND
Legal Assistant